WORKMEN'S COMPENSATION ACT: "COURSE OF THE EMPLOYMENT."—Recovery for injury received by an employee has recently been allowed under statute in the cases of *Starr Piano Co. v. Industrial Accident Commission*[1] and *Judson Manufacturing Company v. Industrial Accident Commission*,[2] although the accidents occurred in each case while the workman was on his way to work. In the Starr case applicant was hurt by falling into an elevator shaft while "on his way to the fourth floor" where petitioner had rented office space. The elevator was solely under the control of the owner of the building, and was maintained and operated for the common use of all the tenants. The court stated " . . . so far as the tenant's employees are concerned, the elevator and the stairs, are, in effect, a part of the employer's premises" and the injury was accordingly held to arise "in the course of the employment." In the Judson case[3] applicant's decedent was killed by an oncoming engine five minutes before working time at a point twenty feet east of the factory gate on a private path which was the sole means of ingress and egress for the employees. Petitioner authorized and required his workers to use the path for purposes of access, and also claimed a lawful easement on the private way across which the path led. The court regarded petitioner's premises as if they were at least twenty feet easterly on the private way. No point was made in either case that the injury was not proximately caused by the employment.[4]

Ordinarily accidents happening to a laborer on the way to or from work are not regarded as in the course of employment.[5] Thus in Ocean Acc. etc. Co. v. Ind. Acc. Comm.[6] compensation was denied to a tug boat engineer who fell into the bay while passing between adjoining ships prior to going ashore and thence to his own vessel. The dissenting judges in the Judson case said they could "see no substantial distinction" between these cases, evidently considering that the decision overruled the tug boat case. It is suggested that such is not, however, a fair inference from the majority opinion, for Justice Lennon takes particular care to distinguish the cases: "The accident there

[1] 58 Cal. Dec. 379, San Francisco Recorder, October 11, 1919, reversing 57 Cal. Dec. 212, a department decree.

[2] (Sept. 26, 1919) 58 Cal. Dec. 291. Shaw and Melvin, J. J., dissent in both cases.

[3] See p. 292. "It would be a harsh and indefensible rule that would withhold compensation from an employee engaged in traversing a dangerous pathway in his employer's building on his way to his own particular place of work therein, on the ground that he had not yet entered upon the real work of his employment. We can perceive no difference in principle between such a case and the case at bar."

[4] Cf. 6 California Law Review, 233.

[5] Honnold, Workmen's Compensation, § 107, and California cases cited; C. J., Workmen's Compensation Acts (pamphlet, 1917) § 75; 25 Harvard Law Review, 401.

[6] (1916) 173 Cal. 313, 159 Pac. 1041.

considered occurred, it is true, while the deceased was attempting to reach his place of employment, but the mode of ingress which he undertook to use was not one provided and required by his employer; it was in no sense a part of the premises where his work was to be performed; and finally it was not in fact a mode of ingress to his work at all."[7]

The employee going to work is not in the course of the employment even if he is riding on the master's vehicle[8] unless it is implied in the contract of service that the workman is entitled so to ride.[9] Nor is a strikebreaker assaulted by strikers at a place seven minutes' walk from the employer's premises, while on his way to lunch within the statute, even though there is a special contract whereby the master agrees to be responsible for "strike injuries" during the whole continuance of the strike.[10]

However, it is not necessary that the laborer, to be without the general rule, be at work actually manipulating the tools of his calling.[11] Arrival at the premises of the employer for the purpose of immediately commencing actual work is sufficient.[12] But employment is not even limited to the exact moment of arrival at the place of actual work, nor to the moment of retirement therefrom. It includes a reasonable amount of time before and after actual work.[13] It is impossible to lay down any definite limit since the circumstances of each case must necessarily differ.[14] The line is a very fine one.[15]

The test most frequently applied is whether the laborer is on the employer's premises. When such is the case the workman will generally be held to be in the course of the employment.[16] But that this is by no means conclusive is shown in the

[7] P. 292. A sweeping dictum in the tug boat case that "there are excluded from the benefits of this act all those accidental injuries which occur while the employee is going to or returning from his work" was declared by Lennon, J., not to be necessary to the decision of the case.

[8] Bogess v. Ind. Acc. Comm. (1917) 176 Cal. 534, 169 Pac. 75.

[9] Cremins v. Guest, L. R. (1908) 1 K. B. 469. Cf. language of Cozens-Hardy, M. R., "It seems to me clear that the employment began when the colliers entered the train in the morning and ceased when they left the train in the evening."

[10] Poulton v. Kelsall L. R. [1912] 2 K. B. 131, 5 B. W. C. C. 318, L. R. A. 1916A 60, n. 36.

[11] Both principal cases make this clear.

[12] Hallett's Case (1919) 121 N. E. 503 (Va.), "top step."

[13] De Constantin v. Pub. Ser. Comm. (1914) 75 W. Va. 32, 83 S. E. 88, L. R. A. 1916A 329; see also, supra, n. 9.

[14] Kennedy, L. J., in Hoskins v. Lancaster (1910) 3 B. W. C. C. 476, 480.

[15] Supra, n. 2, at p. 292 and cases there cited; supra, n. 14, 150 yards held not unreasonable, Farwell, L. J., stating, p. 478, "If this gate had been ten yards away from the lamp room the case would have been unarguable." (Compare with the twenty feet in the Judson case.) Nicol v. Young's etc. Co. (1915) 8 B. W. C. C. 395, (330 yards) accord.

[16] Honnold, Workmen's Compensation, § 109; Sedlock v. Carr Coal etc. Co. (1916) 98 Kan. 680, 159 Pac. 9. Contra: Caton v. Summerlee etc. Co. 39 Scotch L. R. 762 (cited in Honnold, supra, p. 368, n. 73); Gilmour v. Dorman (1911) 4 B. W. C. C. 279.

case of *Gernhardt v. Industrial Accident Commission*,[17] where a maid in a sanitarium was injured on the premises at three o'clock in the afternoon, one hour in advance of the time she was to appear for duty. Compensation was denied. Another test is satisfied if the injury occurs in close proximity to the place of work and on a road or other way intended and contemplated by the contract as being the exclusive means of access to the place of work.[18] A third test is satisfied if the employee is so close to the scene of his labors, though not on the premises, that he is within the zone, environments, and hazards of his work.[19] This test seems reasonable on principle, though it is conceived that it may be a nice question when the laborer is "within the zone, environments, and hazards of his work." *J. J. P.*

Book Reviews

CASES ON NEGOTIABLE INSTRUMENTS (Supplementary to Ames's Cases on Bills and Notes). By Zechariah Chafee, Jn. Published by the Editor, Langdell Hall, Cambridge. pp. 106.

This little volume contains an admirable collection of cases, most of them modern and most of them involving the construction of the Negotiable Instruments Law or the English Bills of Exchange Act. The cases are selected to present fundamental principles of law and not the petty minutiae of statutory interpretation. They deal with live problems of the modern business world, like those involved in the recent Knight, Yancey and Company frauds. (Guaranty Trust Co. v. Hannay & Co., L. R. [1918] 2 K. B. 623). The inclusion of the California decision of Crocker National Bank v. Byrne (1918), 173 Pac. 752, leads one to expect that the forthcoming casebook by Professor Brannan and Professor Chafee will give us for the first time the negotiable instruments used in the mercantile world and the leading cases affecting their construction. This is more important and covers a much wider range than the old-fashioned law of bills and notes. An excellent feature of the supplementary cases is the constant reference to articles and notes in law

[17] (Oct. 8, 1919) 30 Cal. App. Dec. 129.

[18] Technically, this is as far as the principal cases go. See supra, n. 13. Olney, J., in the Starr case states by way of dictum that this test is too broad "if it was intended hereby to include injuries sustained on a public road or way, but the fundamental idea is sound when applied to a private means of access appurtenant, so to speak, to the employer's premises." From this it would appear that if the path in the Judson case had been public instead of private recovery would have been denied. It is submitted that the above dictum places too great a limitation on the fundamental principles to be deduced from the English and American cases as to the line at which employment begins, and that no such distinction is desirable. Cf. supra, note 7.

[19] Hills v. Blair (1914) 182 Mich. 20, 148 N. W. 243, dictum.